

F. JAMES SENSENBRENNER, JR., Wisconsin
CHAIRMAN

HENRY J. HYDE, Illinois
HOWARD COBLE, North Carolina
LAMAR S. SMITH, Texas
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
STEVE CHABOT, Ohio
WILLIAM L. JENKINS, Tennessee
CHRIS CANNON, Utah
SPENCER BACHUS, Alabama
JOHN N. HOSTETTLER, Indiana
MARK GREEN, Wisconsin
RIC KELLER, Florida
MELISSA A. HART, Pennsylvania
JEFF FLAKE, Arizona
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
JOHN R. CARTER, Texas
TOM FEENEY, Florida
MARSHA BLACKBURN, Tennessee

ONE HUNDRED EIGHTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

JOHN CONYERS, JR., Michigan
RANKING MINORITY MEMBER

HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LÖFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
MARTIN T. MEEHAN, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
TAMMY BALDWIN, Wisconsin
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
LINDA T. SÁNCHEZ, California

June 23, 2003

The Honorable John D. Ashcroft
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001


Dear General Ashcroft:

On behalf of the entire House Committee on the Judiciary, we would like to thank you for your appearance before the Committee's June 5, 2003 oversight hearing on the Department of Justice. Your testimony before the Committee concerning the implementation of the PATRIOT Act and the Department's ongoing war against terrorism was of crucial importance and will help guide the legislative and oversight priorities of the Committee in the coming months.

To provide the Committee with a more detailed understanding of current activities at the Department, we ask that you provide written responses to the following questions by October 1, 2003.

Thank you again for your service and for your cooperation with this request.

Sincerely,



F. JAMES SENSENBRENNER, JR.
Chairman



JOHN CONYERS, JR.
Ranking Member

FJS/rt

**The Honorable Lamar Smith, Chairman, Subcommittee on Crime, Terrorism and
Homeland Security**

1. Mr. Attorney General, would you comment further on what the Department is doing to combat intellectual property theft, especially that affecting copyrighted works?
2. I am particularly interested in the activities of the Computer Crime and Intellectual Property Section at DOJ. We keep asking the appropriators to give CCIPS more resources. How are they being used?
3. Do you need more resources in order to increase prosecutions of intellectual property crimes? Are any changes in the law necessary to facilitate prosecutions?
4. What resources might you need to effectively enforce the laws against cyber crimes?
5. The last census found more than seven million people, which is probably a conservative estimate, in the United States illegally. As long as our border security is weak, we will continue to invite people to enter our country illegally. If we can't tell who is coming into the country, then we also don't know what, like terrorist weapons, is crossing over our borders. Of particular concern is the increasing use of matricula cards as identification. These cards are obtained with little to no proof of true identity. This is a dangerous precedent, especially with the recent regulations published by the Treasury Department to allow financial institutions to accept these cards. Only illegal aliens would need to carry such cards in order to open bank accounts, so these regulations seem to endorse illegal immigration. In your judgment and with your background on immigration enforcement, is it possible to ensure that these cards are not used to further illegal immigration? How?
6. How does the Department of Justice address the following issues?:
 - a. Laws that penalize employers for hiring illegal immigrants are seldom enforced.
 - b. A person has to be caught sneaking across the border as many as ten times before they are charged with breaking immigration laws.
 - c. Unless an illegal immigrant is convicted of a serious crime, it's unlikely they will ever be deported.
 - d. Fraudulent birth certificates and Social Security cards are cheap and easy to obtain.
 - e. Some states provide illegal aliens with drivers licenses; many businesses accept Mexican identification cards as proof of legal residence in the U.S..

The Honorable Chris Cannon, Chairman, Subcommittee on Commercial and Administrative Law

7. The Radiation Exposure Compensation Act (RECA) Program of the Department's Civil Division is an important program providing payments to those who contracted certain cancers and other serious diseases as a result of their exposure to certain radiation releases. In 2002, the Civil Division received nearly 3,500 claims under the RECA program. In 2001, the Trust Fund established to pay for RECA claims was exhausted and a supplemental appropriation was necessary to solve the funding problem.

Has the Division taken steps to ensure that an exhaustion of the Trust Fund does not reoccur? Furthermore, how has the Division handled its current caseload?

8. The Office of Consumer Litigation (OCL) within the Civil Division is tasked with enforcing and defending a range of consumer protection matters in both civil and criminal contexts. The commendable work performed by the OCL includes prosecution of "food fraud" cases, in which certain foods are stretched with cheap fillers, but sold as 100% pure high-value foods. Unfortunately, elsewhere in the legal system there appear to have been attempts to target food manufacturers who are fully compliant with their obligations. In particular, a recent class-action lawsuit in New York sought to hold McDonald's Corporation liable for obesity and health problems in teenagers.

One response to what may be a litigation abuse is H.R. 339, the "Personal Responsibility in Food Consumption Act." This bill was introduced by Representative Ric Keller of Florida and has been referred to the Subcommittee on Commercial and Administrative Law, of which I am Chair. In sum, H.R. 339 seeks to prevent frivolous lawsuits of the type I've just described. Under the terms of the bill, consumers would not be able to file a lawsuit against food manufacturers, distributors, or sellers unless the plaintiff proves that the product was not in compliance with applicable statutory and regulatory requirements at the time of sale.

What is your reaction to H.R. 399 and similar measures, which would prohibit abuse of the legal system when food manufacturers are in full compliance with appropriate legal and regulatory requirements?

The Honorable Tammy Baldwin

9. Violence Against Women

Last year, Congress amended the Violence Against Women Act to enhance the status and stature of the Violence Against Women Office (P.L. 107-273), now re-designated as the Office on Violence Against Women (OVW). A major reason for passage of the Violence Against Women Office Act was a concern that successive Attorneys General might diminish the prominence of the role of the Office within DOJ, especially as the Department sets policies and priorities.

- a. Please provide an organizational chart of the Department of Justice indicating clearly where OVW will be located and the lines of reporting authority.
- b. How are the requirements of the Violence Against Women Office Act being implemented?
- c. When will implementation be complete?
- d. Which functions will be conducted by OVW and which by the Office of Justice Programs?
- e. Which personnel/positions will be transferred?

10. How will you ensure that OVW has the resources and status it needs to carry out its mission?

11. Please provide the number of OVW staff, both authorized and filled, for each year since the office was created. Please break this down between policy positions and grant-related positions.

12. DOJ Pride Recognition (submitted by Reps. Baldwin, Conyers, Meehan & Nadler)

You testified at your Senate confirmation hearing that you would not allow discrimination, including discrimination based on sexual orientation, at the Department of Justice. You also agreed that you would treat the gay, lesbian, transgendered employee group, DOJ Pride, the same as other employee organizations at the Justice Department. DOJ Pride has held a June LGBT pride commemoration ceremony or prominent display yearly for the last 6 years and last year Deputy Attorney General Thompson attended their award event.

Given that commitment can you explain your Department's initial decision not to allow a gay pride recognition scheduled for June 18 at the department?

13. News reports indicated that DOJ spokesman Mark Corallo has said that the Department informed DOJ Pride that DOJ could not sponsor any events without a presidential proclamation.

- a. Did the Department sponsor the DOJ Pride commemoration activities in June of 2002 and June of 2001?
- b. Did the President Bush issue a proclamation for LGBT Pride month in 2001 or 2002?
- c. Did the Department print materials for the 2001 commemoration display?

14. If this proclamation requirement is a new policy, who made the decision to adopt this new requirement and what was the decision making process?

15. Are there other DOJ employee minority organizations likely to be denied sponsorship of their events and activities under this proclamation policy? If any, please provide a complete list.

16. If this new proclamation requirement had been in effect since January 2001, which DOJ minority employee organization events or activities would have been ineligible for DOJ

sponsorship during that time period?

17. Please provide:

- a. The written policies regarding DOJ employee organizations in effect on June 1, 2003.
- b. The written policies regarding DOJ employee organizations in effect on June 11, 2003, and indicate any changes from those in effect on June 1, 2003.
- c. The written policies in effect in June 2000 and June 2002.

18. If the Department has unwritten policies or guidelines for sponsorship of DOJ employee organization events or activities, please provide them in writing.

We understand that you have met with most of the other minority employee organizations at the Justice Department since becoming Attorney General in 2001. You have never met with DOJ Pride, despite their repeated requests to meet with you. Will you meet with them?

19. Civil Rights, Hate Crimes, Discrimination (submitted by Reps. Baldwin, Meehan & Nadler)

Recent Congressional testimony by Assistant Attorney General for Civil Rights Ralph Boyd before the House Judiciary Subcommittee on the Constitution describes "13 federal prosecutions" of bias-motivated crimes-some of which he referred to as "backlash" crimes against Middle Eastern, Muslim, and South Asian individuals in the aftermath of the September 11, 2001 terrorist attacks. Please provide the following clarifications about these federal prosecutions.

- a. Please provide a summary of the facts in each of these prosecutions.
- b. Please inform the Committee under which Federal Criminal Civil Rights statutes these prosecutions have gone forward.

20. Mr. Boyd's statement referenced a total of 90 bias-motivated "backlash" prosecutions initiated by Federal, state, and local prosecutors.

- a. How were the cases brought by Federal prosecutors chosen?
- b. Please identify which of the indictments under Federal Criminal Civil Rights statutes took place after state authorities declined to prosecute the case, or failed in their effort to successfully prosecute a bias-motivated case
- c. To the extent that you know, what was the outcome in each of the cases brought by state and local prosecutors, including information on the number of successful convictions and the length of sentences imposed?

21. Please provide summary information about all other Federal prosecutions under 18 USC 245 and each of the other Federal Criminal Civil Rights statutes for the past six years, by year.

22. According to the May 6 *Washington Post*, Federal prosecutors have decided to drop two of four murder counts against a Maryland man accused of killing two women at a secluded campsite in Shenandoah National Park because of their sex and sexual orientation. The

article states: "the government intends to argue that 'part of Rice's intent and motivation' was to single out the women because of their gender and sexual orientation." Prosecutors have quoted Rice as saying he selected women to intimidate and assault because "they are more vulnerable than men" and that Winans and Williams "deserved to die because they were lesbian whores."

If the assertions in this article are correct-with prosecutors relying on bias on gender and sexual orientation grounds as a crucial element of the motivation for this murder-why have the specific hate crime counts of the indictment been dropped?

23. Please provide information on the number of prosecutions under the Freedom of Access to Clinic Entrances Act over the past four years, by year. Please include a summary of the cases in which the Civil Rights Division has brought indictments over the past four years, by year.
24. The President's Faith-Based Initiative creates, for the first time, the possibility of federally-funded employment discrimination on the basis of religion. What is the view of the Department on this government-subsidized religious discrimination?
25. RAVE Act Implementation (submitted by Reps. Baldwin & Scott)

The Illicit Drug Anti-Proliferation Act of 2003 (a.k.a. the RAVE Act, Section 608 of the PROTECT Act passed by Congress in April 2003) amended the Controlled Substances Act to make it unlawful to lease, rent, or use (previously only to open and maintain) a place for manufacturing, distributing, or using a controlled substance, or to manage or control a place for such use. Significant concern has been expressed as to the potential for inappropriate use of this new authority.

- a. Will DOJ or the DEA issue regulations regarding implementation and use of the Illicit Drug Anti-Proliferation Act?
 - b. If yes, when?
 - c. If no, why not?
 - d. Has the Department or DEA provided guidelines to agents in the field and U.S. Attorneys about the appropriate use of this new authority?
 - e. If yes, please provide a written copy
 - f. If no, why not?
26. Property owners and concert promoters have expressed concerns that they could face serious federal charges under the Illicit Drug Anti-Proliferation Act even though they were not encouraging or assisting the use of illegal substances, and even if they take steps to stop drug offenses on their property.
 - a. Will the Department or DEA provide clear guidance in determining what actions will result in liability under this act and what actions will not?
 - b. Will the Department or DEA use sale of water, or the free distribution of water, at a place or event, as evidence to help prove an owner, agent, employee, occupant or mortgagee knowingly or intentionally rented, leased, profited from, or made

available for use a place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance?

- c. If yes, under what circumstances and how would that evidence be used in a prosecution?
- d. Will the Department or DEA use the presence of legal items, such as, but not limited to, glow sticks, as evidence to help prove an owner, agent, employee, occupant or mortgagee knowingly or intentionally rented, leased, profited from, or made available for use a place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance?
- e. If yes, under what circumstances and how would it be used in a prosecution?
- f. Will the Department or DEA use implementation of public safety measures, such as, but not limited to, having paramedics on call, to help prove an owner, agent, employee, occupant or mortgagee knowingly or intentionally rented, leased, profited from, or made available for use a place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance?
- g. If yes, under what circumstances and how would it be used in a prosecution?
- h. Will the Department or DEA use the playing of certain types of music, such as, but not limited to, house, techno, hip hop, rap, trance, industrial or electronica music, as evidence to help prove an owner, agent, employee, occupant or mortgagee knowingly or intentionally rented, leased, profited from, or made available for use a place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance?
- i. If yes, under what circumstances and how would it be used in a prosecution?
- j. How will the Department or DEA ensure that this authority will not be used against owners, agents, employees, occupants and mortgagees who have taken reasonable and prudent actions to prevent drug crimes on their property?
- k. Would you support new regulations or a change to the statute to create a "safe harbor" for owners, agents, employees, occupants and mortgagees under which they would be protected from prosecution if appropriate prior actions to prevent illegal drug use were taken?

Concerns have been expressed that the broad authority provided by the Illicit Drug Anti-Proliferation Act could have a chilling effect on freedom of expression. What steps will the Department and DEA take to ensure that owners, agents, employees, occupants and mortgagees are allowed to organize or allowed to undertake legal activities, such as, but not limited to, concerts, dances, or performances, without having to fear harassment, intimidation or prosecution?

Concerns have been expressed that the broad authority provided by the Illicit Drug Anti-Proliferation Act could stifle Constitutionally guaranteed rights to free speech. There is some evidence that these fears are not simply theoretical. Just last month, two nonprofit organizations were scheduled to hold a fundraiser to raise money for a campaign to advocate for a change to Montana's laws in regard to the medical use of marijuana. This political advocacy is clearly a protected First Amendment activity. There are reports that on May 30, 2003, a DEA Agent informed managers of the Eagles Lodge in Billings, Montana that the Lodge could be fined up to \$250,000 if anyone smoked marijuana at the event. After consulting their attorneys, the Eagle Lodge cancelled the event. This report is very

disturbing.

- a. Will you ask the DOJ Inspector General to conduct an inquiry into this report?
- b. Does the DOJ or DEA have a formal or informal policy or guidelines of informing venue owners that hosting particular events may make them liable under the Illicit Drug Anti-Proliferation Act?
- c. If yes, please provide a copy of the policy that includes, but is not limited to, the standard for determining which type of events and which venue owners are given warnings.
- d. If no, who determines the appropriateness of an agent of DOJ or DEA approaching an owner, agent, employee, occupant or mortgagee prior to an event to inform them about the provision of the Illicit Drug Anti-Proliferation Act or other similar anti-drug laws?
- e. What actions will the Department and DEA take to ensure the exercise of Constitutionally protected activities, such as, but not limited to, political advocacy, protests or rallies?

The Honorable Anthony D. Weiner

29. Since November 2000, attorneys for Jonathan Pollard, have been requesting access to the sealed portions of five documents that are in the court docket in *United States v. Pollard*, U.S. Dist. Ct., Dist. of Columbia, Case No. 86-0207 (TFH). The documents consist of a declaration by then-Secretary of Defense Caspar W. Weinberger, and several related documents. The classified portions of these five documents total approximately 35 to 40 pages. In 1987 they were made available to Mr. Pollard and his then-attorney. Despite the existence of a protective order that contemplates access by future attorneys for Mr. Pollard, no attorney for Mr. Pollard has been permitted to see these docket materials since Mr. Pollard was sentenced to life in prison on March 4, 1987.

Since May 2000, Mr. Pollard has been represented by Mr. Lauer and Mr. Semmelman. They are partners in the law firm, Curtis, Mallet-Prevost, Colt & Mosle LLP. Upon entering the case, counsel applied to the DOJ for whatever security clearance was appropriate to view the classified docket materials. After a thorough background investigation, counsel were notified by the DOJ that they had been granted the appropriate "Top Secret" security clearance. Counsel asked the DOJ for permission to view the documents in a secure government facility. The DOJ refused. Counsel filed a motion in the U.S. District Court for the District of Columbia, asking the court to allow access to the docket materials. In opposition to the motion, on January 11, 2001 an Assistant US Attorney represented to Judge Norma Holloway Johnson that counsel "don't have the right clearances," namely, the Sensitive Compartmented Information ("SCT") clearance needed to access the docket materials. As a result, the Judge refused to allow access.

On August 3, 2001, DOJ court security officer Michael Macisso admitted in writing that these attorneys had the proper security clearances, and that, contrary to the representation made to Judge Johnson, the DOJ's background investigation had determined them fully eligible for "SCT" clearance.

Based upon Mr. Macisso's letter, Mr. Pollard's attorneys filed a motion with the U.S. District Court on August 16, 2001 asking the court to modify its ruling on the ground that it was based upon a false representation by the government, namely, that counsel lacked the proper clearance to view the documents. That motion has been pending now for almost 22 months. It was opposed by the DOJ and remains undecided by the court.

On September 10, 2001, Assistant Attorney General Daniel J. Bryant informed me in writing that between 1993 and 2001 there have been at least 25 instances of access to these docket materials by government staff. Because the documents are court filings-not intelligence reports-it is evident that these 25 instances of access relate to efforts by government personnel to oppose relief for Pollard.

Mr. Attorney General, on June 6, 2001, you testified before this Committee. I asked you if there was any reason why I should not be accorded access to the sealed sentencing memorandum submitted by Secretary Weinberger. I also told you that Mr. Pollard's new attorneys were being denied access to the document by the DOJ. I asked you if you would agree to accord them access. You told me you would look into the matter.

I did not receive any further communication from you. On January 7, 2002, I wrote to you, reminding you of your statement to me, and providing you with additional information about the case. I received no response to my letter.

Since then, the DOJ has vigorously opposed a request by Mr. Pollard's attorneys for a status conference with the court to discuss how it came about that the DOJ made an incorrect representation regarding counsel's clearance level, and why the DOJ was resisting every effort to correct the record and to establish the truth.

A recent article by John Loftus, a former DOJ attorney, indicates that at Mr. Pollard's sentencing the government erroneously attributed to Mr. Pollard serious acts of wrongdoing that were later determined to have been the work of Aldrich Ames. Mr. Loftus contends the government is continuing to this day to perpetuate a cover up of this mistake.

As a Member of Congress and of this Committee, I am deeply disturbed by the DOJ's resistance to allowing Mr. Pollard's attorneys, as well as myself, to see the docket materials. Mr. Pollard's attorneys plainly need to know what is in these documents so that they can represent their client effectively. I am likewise disturbed by the documented evidence that a DOJ attorney made a false statement to the court regarding counsel's level of clearance, and by the DOJ's refusal to rectify the record and do what is just in this matter.

- a. Since the DOJ has allowed at least 25 instances of access to the docket materials by government staff opposing efforts on behalf of Mr. Pollard, on what basis does the DOJ continue to oppose efforts by Mr. Lauer and Mr. Semmelman, security-cleared attorneys for Mr. Pollard, as well as myself, a Member of Congress, to look at these 16-year old court documents in a secure location?
- b. Wouldn't you agree that Mr. Pollard's attorneys and a Member of Congress have as much need to know what is in these documents as do the government staffers who have been permitted access to the documents at least 25 times to oppose relief for Mr. Pollard?

- c. When the Assistant US Attorney incorrectly told the Judge in 2001 that counsel lacked the proper clearances, was that just an error or was the DOJ provided with false information by another agency?
- d. Why has there been such resistance by the DOJ to rectifying the record and establishing the that the attorneys have the proper clearance? What will you do to rectify this?

The Honorable Howard Berman

30. Clear Channel

In a January 2002 letter, I asked you to initiate a DOJ investigation into whether Clear Channel Communications, Inc. was violating anti-trust laws. Among other things, I relayed widespread reports that Clear Channel-owned radio stations have tied air play of some musicians' music to their use of a Clear Channel-owned concert promotion company.

Three months after I sent my letter, Assistant Attorney General Dan Bryant responded that the DOJ was monitoring the situation, and was willing to receive any information "about practices that might raise antitrust concerns warranting an investigation." I found it somewhat curious that DOJ would essentially ask Congress and private parties to do the investigating for it. Nonetheless, over the course of the next year, I encouraged the many people who continued to contact me with credible concerns, to in turn, relay those concerns to the designated Anti-Trust Division attorney. I assumed that DOJ would do its job, namely, that it would vigorously investigate these allegations. However, most of the people I sent to DOJ expressed frustration at the lack of responsiveness. Further, I am unaware of any attempts by DOJ to proactively contact potentially affected parties, as you would expect in a serious investigation. For a time my own staff was unable to get their calls to DOJ returned; that is, until I testified before the Senate Commerce Committee in January of this year, and noted DOJ's unresponsiveness.

I am extremely dissatisfied with DOJ's apparent unwillingness to initiate any kind of investigation into these serious allegations.

- a. I want to know, once and for all, what DOJ has done to investigate the allegations of anti-trust violations by Clear Channel.
- b. If it has investigated these allegations and found them lacking credibility, I would like to know that, and I imagine Clear Channel would as well.
- c. If it has an ongoing investigation, I would also like to know that.

31. Matter of R.A.

In February 2003, it was reported that you were planning to issue new regulations that would limit the ability of women to be granted asylum based on gender-related harms, such as domestic violence, and to issue a decision denying asylum to Ms. Rodi Alvarado. Ms. Alvarado, a Guatemalan survivor of severe domestic violence, had been granted asylum by

an immigration judge, but in 1999 the Board of Immigration Appeals reversed that decision. Then-Attorney General Reno intervened and proposed regulations securing Alvarado's asylum status and confirming the availability of asylum for women who suffered gender-related violence. Those proposed regulations never became final. In March of this year, before the Senate Judiciary Committee you were asked about the status of the case and proposed gender-based asylum regulations. You indicated that you have certified the case to yourself and that the regulations were under formulation at the Department of Homeland Security with the "assistance" of the Department of Justice.

- a. I would like to know the status of these proposed new gender-based asylum regulations and how they will affect the ability of women who have fled persecution because of their gender to get asylum protection.
- b. I would also like an update on the status of your decision in the Alvarado case and what effect it will have on the cases of other women seeking asylum protection on the basis of gender persecution.

The Honorable Zoe Lofgren

32. Of five letters addressed to you that I have initiated or cosigned with other Members of Congress since August of last year, it has taken more than four months for you to respond to two letters, more than three months to respond to one letter, and I have yet to receive a response to two letters written three months ago. Worse yet is a response I received to a letter regarding several Korean immigrants caught up in a green card scam orchestrated by a corrupt former INS supervisor and rogue immigration brokers. After waiting over three months for the letter, I received a reply that essentially stated you could not comment on the case, a response that could have easily been written much sooner. What are you doing to improve the length of time it takes for your department to respond to letters from Members of Congress, especially for letters that do not require in depth responses?

The Honorable Adam B. Schiff

33. Armenia was initially included on a December 16, 2003 list of nations under the National Security Entry-Exit Registration System (NSEERS), requiring male nationals aged 16 or older to specifically register with the Immigration and Naturalization Service (INS). After much protest from the Armenian-American community, the Federal Register was corrected on December 18th and Armenia was no longer included on that list. On December 20th of last year, I joined 33 of my colleagues in sending a letter to you regarding this matter. In your response, you did not fully address the questions raised in our letter. With that in mind, I respectfully request that you provide answers to the following questions:
- a. Please provide the Committee with a full explanation as to why Armenia was added to the NSEERS list and then subsequently removed two days later.
 - b. What are the plans for implementing the NSEERS system from now and into the future, in general, and also specifically regarding Armenia?
 - c. What is the plan to educate various ethnic communities within the United States of

- their legal status if they fall under this NSEERS requirement?
- d. Is it the intent to apply retroactive "call-ins" for all non-immigrant aliens from all nations?
- e. How are foreign policy ramifications taken into consideration when making decisions about implementation?
- f. Will this policy apply to all nations, or only specific ones?

The Honorable Linda Sanchez

- 34.
 - a. I understand that it is your position that state and local law officials have the "inherent authority" to enforce immigration laws. However, in its January 23, 2003 Final Ruling on certain immigration detention matters, the DOJ/INS relied on Supreme Court precedents that contradict your view about state and local law enforcement officers having "inherent authority" to enforce immigration laws? Specifically, the DOJ pronounced that "Federal control over matters regarding aliens and immigration is plenary and exclusive. 'Control over immigration and naturalization is entrusted exclusively to the Federal Government, and a State has no power to interfere.' *Nyquist v. Mauclet*, 432 U.S. 1, 10 (1977) . . ." Please explain what your position regarding the "inherent authority" of state and local police is based on.
 - b. Some groups have requested this information via a FOIA request, but were denied. At what point will you be providing that information, and in what manner? Will you respond to a second FOIA request?
 - c. Furthermore, are you aware that your statement suggesting that there is this "inherent authority" has resulted in civil rights abuse, such as racial profiling of Latinos-whether citizens, legal permanent residents, or undocumented immigrants?
- 35. What, if any, legal protections are in place to ensure that state and local police do not commit civil rights abuses when they would enforce federal civil immigration laws? As you are aware, the standard for scrutiny of state and local police in this instance would be "strict scrutiny" since enforcing immigration laws is not normally within their authority. The federal government, on the other hand, would be judged under a lower standard because enforcing immigration laws is a part of its exclusive plenary authority. In light of that, what protections do you have in place to protect against violations such as racial profiling and excessive use of force? What protections will the federal government offer to untrained state and local police who are sued for their mistakes?
- 36. On February 26, 2003, the DOJ issued an interim rule that allows you, or future Attorneys General, to abbreviate or waive training requirements for state and local law enforcement officers in the event that they are needed to respond to a "declared mass influx of aliens." This is an interesting interim rule, since it essentially reverses a DOJ position from six months earlier. Last July, the DOJ made a final rule to create a mechanism for trained state and local law enforcement officers to perform the duties and functions of immigration officers during declared mass influxes of aliens. One of the main parts of that final rule was the requirement that training on basic immigration law must be included in the agreements created pursuant to this final rule. Can you explain how you expect state and local law

